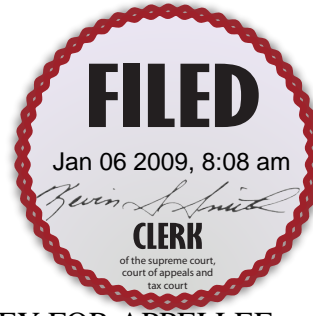


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT CHILD RELATIONSHIPS OF)
D.L. AND K.L. AND THE CHILDREN'S)
PARENT,)

H.L.I.,)
Appellant-Respondent,)

vs.)

VANDERBURGH COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 82A04-0805-JV-284

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0704-JT-41 and 82D01-0704-JT-42

January 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

H.L.I. appeals from the juvenile court's orders terminating her parental rights to her children, D.L. and K.L. We affirm.

H.L.I. gave birth to D.L. on October 16, 2000, and to K.L. on January 10, 2002. The children were removed from H.L.I.'s home on June 19, 2003, and subsequently found to be children in need of services ("CHINS"). On April 10, 2007, the Vanderburgh County Department of Child Services ("the Department") filed petitions to terminate H.L.I.'s parental rights.¹ A termination hearing was set for November 1, 2007, but H.L.I. failed to appear.² Over the objection of her counsel, the juvenile court took a default judgment under advisement. The court subsequently reset the hearing for February 25 and 26, 2008. At a hearing on January 15, 2008, the court reminded H.L.I. of the February 25 hearing date. On February 25, H.L.I. again failed to appear, and her counsel did not know her whereabouts. The court continued the hearing to the next day. On February 26, H.L.I. appeared but was suffering from the flu; the court continued the hearing to March 18 at 8:00 a.m. because of her illness.

When the hearing commenced on March 18, H.L.I. yet again failed to appear. The Department's counsel and the court deputy confirmed that H.L.I. was not in the local hospitals or in jail. H.L.I.'s counsel said that she was unaware of her client's whereabouts and further stated,

[S]he has consistently called me, um, when she's not been able to make it. For example, our last termination, uh, that she did not show for she had actually

¹ The petition as to K.L. was filed under cause number 82D01-0704-JT-41, and the petition as to D.L. was filed under cause number 82D01-0704-JT-42. These causes were consolidated for purposes of this appeal.

² The record does not reveal the reason, if any, for H.L.I.'s failure to appear at this hearing.

contacted me and left a message prior to the hearing. Um, I informed her, uh, on our last date that we were in court, um, that she would need to be here, that if she did not show I would have to withdraw as her attorney in this matter. Um, unfortunately, given the time frame, I wasn't able to get a letter out to her in that effect, um, but I have had no messages from her indicating that she would not be here today.

Tr. at 89-90. The court granted counsel's motion to withdraw and allowed the Department to present evidence. At the close of evidence, the court indicated that it would issue a ruling at 4:00 p.m. and concluded the hearing.

H.L.I. arrived one hour after the scheduled start of the hearing, and the court granted her an opportunity to speak:

BY [H.L.I.]: Okay, Your Honor, I apologize for bein' late today. Um, I have an ovarian cyst which causes ... has me on medication that I get really tired real easy. Uh, I don't want my rights taken. If possible, I would like to try to set a retrial ... a retrial, but I have surgery in two to three weeks. Is there any way possible that we could do that, 'cause, I mean, I really love my children.

BY THE COURT: I understand, [H.L.I.], you may love your children but this is ... you ... you did not show up the last time we were in court when we had a trial. At that time I went ahead and allowed a one day continuance to see if your attorney could get you here. You showed up the next day, but you were sick and you wanted a continuance. I gave you that second opportunity.

BY [H.L.I.]: Correct.

BY THE COURT: Today we were here again on time. We were ready to go, everyone was here, witnesses were available, witnesses were called, and you weren't here.

BY [H.L.I.]: Correct, and I have other court dates besides this one.

BY THE COURT: That's no excuse.

BY [H.L.I.]: I have felony, I have misdemeanor.

BY THE COURT: The bottom line ... the bottom line, [H.L.I.], is that you are not responsible enough to show up for court whenever your children's rights are at stake, then it's hard for me to believe that you're responsible enough to parent children.

BY [H.L.I.]: Well with all due respect, Your Honor, I am here ...

BY THE COURT: You're late.

BY [H.L.I.]: ... late.

BY THE COURT: And the trial's already been held.

BY [H.L.I.]: I'm late ...

BY THE COURT: Trial's already been held.

BY [H.L.I.]: ... but I'm here.

BY THE COURT: The trial's already been held.

BY [H.L.I.]: So you can't say that I didn't ... that I don't care enough for my children.

BY THE COURT: If you care enough about your children you would've been here on time.

BY [H.L.I.]: Okay, but a normal mother ...

BY THE COURT: And I shouldn't say care about your children, it's a matter of being able to parent responsibly, it's not a matter of caring.

BY [H.L.I.]: Okay, I understand that, but a ... a normal parent that's not in a CHINS case, if they're late, would it be marked against them?

BY THE COURT: Absolutely.

BY [H.L.I.]: No it wouldn't, because it has nothing to do with Court.

BY THE COURT: [H.L.I.] ...

BY [H.L.I.]: It has to do with life, period.

BY THE COURT: ... you knew ... you knew when to be here. I've already given you two continuances. I'm not giving you another try.

Id. at 98-101.

On April 10, 2008, the juvenile court issued separate orders terminating H.L.I.'s parental rights to D.L. and K.L. The orders are identical in all relevant respects and read in pertinent part as follows:

FINDINGS OF FACTS

....

3. [The children have] been removed from the care of both of [their] parents since June 19, 2003. [They have] been in either foster care placement or in relative placement with [each other] since that date.
4. [The children were removed] because they both had been locked in a room/closet for prolonged periods; had soiled diapers, little or no food in the home and the mother was not giving appropriate supervision to the children.
5. The mother was offered services at times including visitation with the [children] herein, a parent aide, random drug screening and bus tokens.
6. The mother was noncompliant on the services offered to her.
7. The mother is currently living with friends.
8. The mother is unemployed.
9. The mother is planning on studying crime scene investigation through the University of Phoenix.
10. The mother has been incarcerated during [these wardships].
11. The mother's current husband is in prison at Wabash Valley.

12. Both children have special needs which require exceptional parenting skills.
13. The mother hasn't seen the children for over 2 years.
14. The mother has a history of transiency.
15. The mother has a history of drug abuse.
16. The mother did not show up at the scheduled time for her termination trial.
17. The mother previously failed to appear on the first day scheduled for her termination, but the Court ultimately allowed her attorney a continuance.
18. The mother's total lack of responsibility is glaring in this case.
19. CASA believes it is in the best interest of the children that the parent's rights be terminated.
20. [The children are] in an adoptable placement.

Conclusions of Law

....

4. The Court now finds by clear and convincing evidence that the allegations of the petition[s] to terminate parental rights are true in that:
 - a. [The children have] been removed from the care and custody of [their] parents for fifteen (15) months out of twenty-two (22) months or more after a dispositional decree.
 - b. There is a reasonable probability that the condition that resulted in [the children's] removal from, and continued placement outside the care and custody of [H.L.I.] will not be remedied.
 - c. There is [a] reasonable probability that the continuation of the parent-child relationship between [H.L.I.] and [the children] poses a threat to [the children's] well being.
 - d. Termination of the parent-child relationship of [H.L.I.] to [the children] is in [the children's] best interests.

- e. The plan of the Department of Child Services for the care and treatment of [the children] upon termination of parental rights is adoption, which is acceptable and satisfactory.

IT IS NOW CONSIDERED, ORDERED, ADJUDGED, AND DECREED that the parent-child relationship between [H.L.I.] to [the children] is now and forever terminated.

Appellant's Br. (attached appendix).

On appeal, H.L.I. contends that the juvenile court erred in terminating her parental rights. H.L.I. does not challenge any of the court's findings or conclusions. Rather, she asserts that the court's refusal to grant her yet another continuance violated her due process rights and constitutes reversible error. We disagree.

[T]he ruling on a non-statutory motion for a continuance is within the sound discretion of the trial court. Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance. A decision on a motion for continuance will be reversed only upon a showing of an abuse of discretion and prejudice resulting from such an abuse.

J.M. v. Marion County Office of Family & Children, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004) (citations omitted), *trans. denied*.

As documented above, the juvenile court continued the termination hearing twice because H.L.I. failed to appear and a third time because she was ill. We find no abuse of discretion in the court's refusal to reward H.L.I.'s demonstrated lack of responsibility with a fourth continuance. "Delays in the adjudication of a case impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved." *In re Termination of Parent-Child Relationship of S.F.*, 883 N.E.2d 830, 836 (Ind. Ct. App. 2008). Moreover, H.L.I. has made no effort to demonstrate that she was prejudiced by the juvenile court's decision. Accordingly, we affirm.

Affirmed.

ROBB, J., and BROWN, J., concur.